EXAMINING EUTHANASIA: IS THERE AN ANSWER?

Tia Jose and Keshavdev J.S.[*]

Abstract

The uncertainty that is looming large over India's stand on euthanasia can be settled only by enacting a statute regarding the same as well as by revising certain existing laws. Decriminalizing of attempt to commit suicide, though believed to provide impetus to the call for formulation of a euthanasia regime in the country, will remain ineffective with regard to the same as long as Section 306 dealing with abetment of suicide is not altered. Almost four years after the judgement in Aruna Ramachandra Shanbaug v. Union of India and Others, Euthanasia is still unchartered territory for the Indian Parliament. Can we wait any longer, or rather, should we wait any longer? Increase in the number of euthanasia petitions across the country point towards the shift in the general mentality towards euthanasia. Drawing inspiration from the recent developments in foreign jurisdictions, a comprehensive legislation must be drafted, settling the issue once and for all. It is high time we put our moral reservations on

[*]Tia Jose and Keshavdev J.S. are third and fourth-year students respectively at National University of Advanced Legal Studies, Kochi. The authors may be reached at tiajk23@gmail.com and keshavdevjs@gmail.com.

euthanasia behind us and start viewing death as an inevitable biological function. In the wake of stronger and more urgent demand from the public for a detailed legislation on euthanasia, the Parliament is deliberating on the matter and has also called for the opinion of each State. While drafting this would-be iconic statute, the Legislature must not ignore the fact that the Shanbaug judgement, in spite of laying down several guidelines, does not cover the finer aspects of euthanasia. It is these finer aspects that this paper seeks to discuss. The fact that Euthanasia requires two consulting adults, the patient and the Doctor, remains ignored, and concentration on the implications to the patient alone precludes any objective analysis of Euthanasia legislation. The social relevance quotient associated with euthanasia being high, the Parliament must ensure that the imminent legislation reaches the grass root level so as to include all affected parties within the loop.

I. INTRODUCTION

"*I am the master of my fate. I am the captain of my soul*."[1]

An individual's right to life and liberty is one of the most basic rights accorded by the Constitution of India through Article 21. The two aspects contained in Article 21, that is, life and liberty form two

[1]WILLIAM EARNEST HENLEY, INVICTUS (1888).

essential components in a discussion on the concept of 'euthanasia'. Since Article 21 of the Constitution casts an obligation on the State to preserve life,[2] euthanasia may be regarded as an alien concept with respect to the duties entrusted on the State. When such an obligation is entrusted on the State, the question of sanctioning euthanasia is quite unfathomable. Then again, mere animal existence isn't really the right that Article 21 protects.[3]

As rightly opined by Dr. M. Indira and Dr. Alka Dhalunder the caption "Meaning of life, suffering and death" as read in the International Conference on Health Policy, Ethics and Human Values held at New Delhi in 1986,

> "*Life is not mere living but living in health. Health is not the absence of illness but a glowing vitality; the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological wellbeing is intrinsically inter-woven into the fabric of life. According to Indian philosophy, that which is born must die. Death is the only certain thing in life*."[4]

The issue of euthanasia was, for the longest time, one of the most under-discussed, yet one of the most pressing matters in India, but the very same issue reverberated throughout the length and breadth of the nation consequent to the public attention that was concentrated towards a passive euthanasia petition filed by Ms. Pinki Virani on behalf of Ms. Aruna Ramchandra Shanbaug. The Court's observations in *Aruna Ramchandra Shanbaugv. Union of India and*

[2]Pt. Parmanand Katara v. Union of India & Ors., (1989) AIR 2039 (SC).
[3]Kharak Singh v. State of U.P & Ors., (1964) 1 SCR 332.
[4]Colin Gonsalves, Vijay Hiremath, Rebecca Gonsalvez, Prisoners' Rights 301 (Socio Legal Information Cent, 2011).

Others[5] and along with the developments and discussions that ensued by way of various other Public Interest Litigations such as *Common Cause (A Regd. Society)* v. *Union of India*,[6] and by general public outcry has made Euthanasia one of the most humane debates the Country has ever seen.

II. BACKGROUND

The most felicitous manner to start a discussion on euthanasia is by differentiating suicide from euthanasia. In *Maruti Sripati Dubal* v. *State of Maharashtra*[7] a clear distinction between suicide and mercy killing were brought forth by the Bombay High Court. It was observed that since the role of one's self is on a higher pedestal in cases of suicides; it is the termination of one's own life by an act of his. On the other hand, in cases of euthanasia, another individual contributes substantially to the termination of a person's life. "Mercy-killing thus is not suicide and an attempt at mercy-killing is not covered by the provisions of Section 309" of the Indian Penal Code which –before its repeal- dealt with the punishment for an attempt to commit suicide. The distinction made by the Court left out of its ambit, the concept of 'physician- assisted suicides'; the difficulty in compartmentalizing 'physician- assisted suicides' into the category of suicides or mercy- killing/ euthanasia in the strictest sense was not addressed by the Court while discussing this case. The most obvious difference between 'physician- assisted suicide' and euthanasia is that in the former, the patient takes active steps to terminate his own life with assistance from a medical professional but in the latter, it is the

[5]Aruna Ramchandra Shanbaug v. Union of India and Others, (2011) 4 SCC 454 [hereinafter Shanbaug].
[6]Common Cause (A Regd. Society) v. Union of India, 2014 (3) SCALE 1.
[7]Maruti Sripati Dubal v. State of Maharashtra, (1987) 1 BomCR 499, [hereinafter Dubal].

medical professional whose action leads to the termination of the patient's life.

More light was thrown upon the conceptual differences between suicide and mercy- killing by stating that "*euthanasia or mercy-killing is nothing but homicide, whatever the circumstances in which it is affected. Unless it is specifically exempted, it cannot but be an offence*".[8] Taking a softer stand on attempts to commit suicide, it was held by the Court that Section 309 of the Indian Penal Code is ultra vires the Constitution owing to its arbitrariness, discriminatory nature etc., resulting in it being in violation of Articles 14 and 21. Citing these reasons, the Court declared that Section 309 of the Indian Penal Code must be struck down.

The above-mentioned case was closely followed by *Chenna Jagadeeshwar & Anr*. v. *State of Andhra Pradesh*[9] wherein the Andhra Pradesh High Court held that the right to life guaranteed under Article 21 of the Constitution may not be construed to include the right to die. Therefore, the constitutional validity of Section 309 of the Indian Penal Code was upheld. The much- needed deliberation on the negative aspect of a phenomenal Fundamental Right guaranteed by the Constitution took place in this case but the conflicting views expressed by the Bombay High Court and the Andhra Pradesh High Court led to confusion on matters related to the negative aspect of the right to life. The ambiguous language of the Supreme Court while rendering judgements made matters even worse. For instance, an observation made in *Vikram Deo Singh Tomar* v. *State of Bihar*[10] stating that "every person is entitled to a quality of life consistent with his human personality. The right to live with

[8]*Id.*
[9]Chenna Jagadeeshwar & Anr. v. State of Andhra Pradesh, (1988) Cri. L.J. 549.
[10]Vikram Deo Singh Tomar v. State of Bihar, (1988) Supp. SCC 734.

human dignity is the fundamental right of every Indian citizen". This observation conveys at least two interpretations:

- Right to life under Article 21 includes the right to live with human dignity and this Article seeks to preserve and protect life.
- Human dignity is an essential component of the right to life under Article 21; therefore it is quite possible to conclude that a man shall have the right to let go of his life in a dignified manner if he wishes to end his existence which is merely a state of prolonging death through medical assistance, that is, if he is in a Permanent Vegetative State.

In *P. Rathinam* v. *Union of India,*[11] the prevailing confusion was laid to rest, only to kick up even greater mayhem later on, by the Supreme Court holding that the right to life under Article 21 includes the right to die. It was held that Section 309 of the Penal Code deserves to be effaced from the statute book to humanise our penal laws and that Section 309 violates Article 21, and so, it is void.

The Apex Court, in this case, brought our attention to the aspect of voluntary consent in a case of euthanasia by discussing a Supreme Court of Nevada decision, i.e., *Mckay* v. *Bergstedt*[12] where it was held that where the individual's interest in refusing medical treatment outweighs the state's interests, a competent, irreversibly disabled, but non- terminally ill adult, subject to certain procedural guidelines, may refuse life- sustaining treatment[13].

[11]P.Rathinam v. Union of India, (1994) 3 SCC 394.
[12]Mckay v. Bergstedt, (1990) 801 P.2d 617.
[13]Anthony J. Dangelantonio, McKay v. Bergstedt, 7 ISSUES L. AND MED. 351 (1991-92).

A later decision of the Apex Court, *Gian Kaur v. State of Punjab,*[14] overruled the earlier two Judge Bench decision of the Supreme Court in *P. Rathinam* v. *Union of India.* The Court held that the right to life under Article 21 of the Constitution does not include the right to die which was in direct contrast to the holding in *P. Rathinam*. The Constitution Bench of the Indian Supreme Court in *Gian Kaur* held that both euthanasia and assisted suicide are not lawful in India.[15] The Court set out that permitting termination of life of a person about to die or in a vegetative state is inconsistent with Article 21, stating thus:

> "*A question may arise, in the context of a dying man, who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the 'right to die' with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support* the *view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.*"

This decision cannot be taken to be a model judgement as it is ambiguous in nature as far as the issue of physician- assisted deaths are concerned; it only left the issue open to a plethora of opinions

[14]Gian Kaur v. State of Punjab, (1996) 2 SCC 648.
[15]Arsalaan. F. Rashid et al., Euthanasia Revisited: The Aruna Shanbaug Verdict, 34 J. INDIAN ACAD. FORENSIC MED. 168 (2012).

from various interest groups. In the very same case, the Supreme Court approved of the decision of the House of Lords in *Airedale,* and observed that euthanasia could be made lawful only by legislation. By stating thus, the Court excused itself of any future criticisms that may ensue on account of a subsequent legalizing of euthanasia and/ or related matters.

Though the constitutional validity of Section 309 of the Indian Penal Code had been challenged before Courts on various occasions, an ancillary issue of the validity of Section 306 was never disputed as a main objection. In *Naresh Marotrao Sakhre* v. *Union of India*,[16] the constitutional validity of Section 306 of the Indian Penal Code which makes abetment to suicide a punishable offence was challenged. Citing the observation of the Bombay High Court in *Dubal* on how the decriminalization of abetment of suicide may pave way for euthanasia or mercy killing in particular, this Court held that Section 306 of the Indian Penal Code is constitutional and is not in conflict with the values enshrined under and the rights sought to be protected by Articles 14 and 21 of the Constitution.

The Kerala High Court, in *C.A. Thomas Master* v. *Union of India*,[17] observed that "it is difficult to construe Article 21 to include within it the 'right to die' as a part of the fundamental right guaranteed therein. 'Right to life' is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life. Discussions with respect to similarity or dissimilarity of the 'right to life' with other rights such as the right to 'freedom of speech' and the like to provide a comparable basis to hold that the 'right to life' also includes the right to die took place while delivering the judgement of this case. Right to die was held to be inconsistent with the right to

[16]Naresh Marotrao Sakhre v. Union of India, (1995) Cri. L.J. 96 (Bom).
[17]C.A. Thomas Master v. Union of India, (2000) Cri. L.J. 3729.

life. It was only in 2007 that a breakthrough of some sort was achieved with regard to Euthanasia.

III. ATTEMPT AT LEGISLATION

The Euthanasia (Permission and Regulation) Bill introduced in the Lok Sabha in 2007 was the first attempt to regulate the practice of Euthanasia in India. Since thousands of Patients every year are routinely assisted to die by doctors,[18] and considering the fact that it is not uncommon for Doctors to say "Here's some medication, and make sure you don't take more than 22 pills because 22 pills will kill you",[19] even if the practice is regulated, it cannot be reasonably said that there will not be misuse of the same. However, it is necessary to maintain a check on the issue, and this is rendered impossible in the absence of legislation. Furthermore, if legislation sanctions Euthanasia, it will also provide uniformity in the adjudication of Euthanasia cases[20], since the scope of the term 'Euthanasia' goes much beyond the Patient and the Physician, and invokes careful considerations in criminal law.[21]

Though the Euthanasia (Permission and Regulation) Bill was a humane attempt at reform for those who had "no hope of recovery",[22] and sought to introduce sufficient checks and balances at the institutional level so as to prevent misuse by "unscrupulous

[18]P.V.L.N Rao, *Is Euthanasia Ethical*, THE HINDU, http://www.thehindu.com/thehindu/op/2003/11/25/stories/ 2003112500341600.htm.
[19]Lisa Belkin, *Doctor tells of First Death using his suicide device*, THE NEW YORK TIMES, http://www.nytimes.com/1990/06/06/us/doctor-tells-of-first-death-using-his-suicide-device.html.
[20]Tania Sebastian, *Legalization of Euthanasia in India with specific reference to the Terminally Ill: Problems and Perspectives*, 2 JILS 341, 365 (2012).
[21]See VIII of this article.
[22]Euthanasia (Permission and Regulation) Bill, 2007, Bill No. 55, 2007, Statement of Objects and Reasons.

elements",[23] it failed to receive the assent of both Houses of Parliament and lapsed. Furthermore, subsequent to the proposal being made in the Lok Sabha, the 196th Law Commission Report advocated that Active Euthanasia and Physician-Assisted Suicide should remain illegal[24], and promoted the legalisation of Passive Euthanasia for the 'Terminally ill' with sufficient safeguards instead.

This must be viewed as a step being taken back from legalising one of the oldest and most sensitive issues debated in the public sphere. Considering the fact that Active Euthanasia is illegal in most countries in the absence of enabling legislation[25], and the fact that societal perception regarding Euthanasia is now widely in support of such legislation, it can be reasonably said that the view supporting Passive Euthanasia alone is anachronic. The Judiciary has rightfully abstained from providing an opinion on the matter since it is essentially a consideration for the Legislature, and have, in the meantime, provided a set of guidelines to be followed until there is concrete legislation on the subject, through its judgement in Shanbaug.

IV. WHAT HAPPENED IN SHANBAUG?

The Supreme Court of India, while rendering the judgement in *Shanbaug*, relied heavily on the House of Lords decision in *Airedale NHS Trust* v. *Bland*[26] which has been followed in innumerable cases in the United Kingdom. The law is fairly settled in the UK in the case of incompetent patients; artificial life support system may be

[23] *Id.*
[24] Law Commission of India, 196th Report, Medical Treatment to Medically ill Patients (Protection of Patients and Medical Practitioners), 2006.
[25] Shanbaug, *supra* note 5, at ¶ 39.
[26] Airedale NHS Trust v. Bland, (1993) 3 All ER 537.

withdrawn by doctors acting on the basis of informed medical opinion, if it is in the best interest of the patient.

Detailed deliberations took place in this judgement as regards the competency of a person to give consent to passive euthanasia of a terminally ill person on his behalf. The Court held that the decision to discontinue life support must be taken either by the parents or the spouse or other close relatives, or in their absence, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending to the patient. The Court, while stating this, attached utmost relevance to the protection of the interests of the concerned patient.[27]

Following the holding in *Airedale*, the Indian Supreme Court declared the High Court to be the competent authority to approve the withdrawal of life support to an incompetent person.[28]This is in the interest of the protection of the patient, protection of the doctors, relative and next friend, and for reassurance of the patient's family as well as the public.

It was declared by the Bench that the guidelines in the instant case were to be the law of the land until the Parliament made legislation on it. In both *Shanbaug* and *Gian Kaur*, the Court had pointedly opined that since the issues involved went beyond the scope of legal interpretation and construction, it was the prerogative of the Parliament to enact a law on the subject to bring about clarity and remove confusion.[29]This case may be considered as a phenomenal one inasmuch as it attempted to include several aspects concerned with euthanasia though it failed to comprehensively discuss and reach a

[27]Shanbaug, *supra* note 5, at ¶¶136,137.
[28]*Id.* at ¶ 138.
[29]Sunil Garodia, *Why Procrastinate on the Issue of Euthanasia?*, THE INDIAN REPUBLIC, http://www.theindianrepublic.com/tbp/procrastinate-issue-euthanasia-100043893.html.

conclusion on the socio-ethical implications of legalizing the same. Owing to the lack of enthusiasm on part of the Legislature to enact upon the matter in furtherance of the *Shanbaug* judgement, more petitions flowed in, of which the most relevant one has been discussed below.

A. Common Cause (A Regd. Society) v. Union of India

The NGO Common Cause petitioned the Supreme Court that a person afflicted with a terminal disease should be freed from agony by withdrawing artificial medical support provided to him. In this case, judgements rendered by the Supreme Court in *Gian Kaur* as well as *Shanbaug* were carefully analysed by the Supreme Court but it could not reach a conclusion on the question involved and referred the matter to a Constitution Bench of the Supreme Court for an authoritative opinion.

The five-judge Constitution bench of Supreme Court, on 15 July, 2014 issued a notice to the State Governments and Union Territories seeking their opinion on legalizing passive euthanasia. The Bench reasoned that States and Union Territories must also be heard because the issue not only involves the issue of constitutionality of euthanasia but also involves questions of morality, religion and medical science.[30]

In light of these two decisions and widespread movements for law reform, it seems that legislation on Passive Euthanasia is fast approaching. This is *prima facie* a step away from the progressive bill introduced in 2007. However, a recent news report indicated that

[30]*The Issue of Euthanasia in India and Around the World*, JAGRANJOSH, http://www.jagranjosh.com/current-affairs/the-issue-of-euthanasia-in-india-and-across-the-world-1405688672-1.

there has been no new proposal for Euthanasia Legislation in Parliament till date despite the SC guidelines regarding the same.[31]

V. EUTHANASIA VIS-À-VIS DECRIMINALISATION OF ATTEMPT TO COMMIT SUICIDE

Another allied issue that has sparked off debates concerning the right to die is the decriminalisation of Section 309 of the Indian Penal Code, which embodied the crime of 'Attempt to Commit Suicide.' Deletion of the "anachronistic"[32] Section 309 has come pursuant to Courts denouncing the same, terming it on some occasions as "a blot on our statute book", and observing that it was "barbaric to punish a person who took the extreme step of trying to end his life owing to acute frustration, and there was a need to counsel, not punish, such unfortunate people."[33] Deletion of the said crime from the statute book does not automatically legalise Euthanasia. In fact, as of now, a person who wishes to commit suicide is not deterred from doing so by virtue of the existence of any law, but a person who wishes to die, but is unable to do so by owing to his illness is denied this inherent right of autonomy, by the lack of statutory law regarding the same.

However, decriminalization of the said offense has provided new impetus to the longstanding movement for legalization of Euthanasia. MP of the Lok Sabha, Mr. A. Sampath, who promoted

[31]*Govt. Endorses SC Guidelines on Passive Euthanasia*, THE HINDU, http://www.thehindu.com/news/national/govt-endorses-sc-guidelines-on-passive-euthanasia/article6723278.ece.

[32]Law Commission of India, 210th Report, Humanization and Decriminalization of Attempt to Suicide, 2008, at 39.

[33]Sudhanshu Ranjan, *A humane reform,* THE DECCAN CHRONICLE, http://www.deccanchronicle.com/141220/commentary-op-ed/article/humane-reform.

decriminalization of Attempt to commit suicide, opined that a radical and pragmatic approach should be adopted with regard to the subject, and also suggested that there was a strong chance for a system with adequate safeguards to be put in place, as regards Euthanasia.[34]

Despite the SC legalizing Passive Euthanasia under exceptional circumstances, the law regarding the same will be uncertain and insufficient until it is given expression in a statute. The SC guidelines on the same were implemented only as a temporary measure until the Parliament implements a statute, and therefore stays silent about a number of essential considerations. Therefore, while enacting this legislation, the Government might have to look to the west, where the law regarding the same is much more certain and developed. For instance, as regards installing adequate safeguards, the concept of a 'living will' recognized in the US, in the nature of an advance medical directive to one's next of kin and caregivers to the effect that in the event of the incapacitation of the executant, he should not be subjected to extraordinary life prolonging treatments or procedures so that the agony and process of dying is not unduly extended, is one concept which may be considered in India as well. Similarly, even in the execution of Passive Euthanasia, measures such as "Deep and Continuous Sedation until Death", presently being debated in France, may be considered.

Legalization of Euthanasia and casting clarity on the law relating to Euthanasia is only a humane reform considering stories such as those of S. Seethalakshmi who recently died a miserable death in her hospital bed, seven months after giving an application seeking

[34]Subodh Ghildiyal, *Decriminalization of Suicide attempt rekindles debate on Euthanasia*, THE TIMES OF INDIA, http://timesofindia.indiatimes.com/india/Decriminalization-of-suicide-attempt-rekindles-debate-on-euthanasia/articleshow/45464717.cms.

permission for Euthanasia before the Chennai High Court.[35] The question is, how many more people need to die before this humane reform is made?

VI. A QUALIFIED RIGHT TO DIE?

"*Darkling I listen, and for many a time*

I have been half in love with ***easeful*** *death,*

Called him soft names in many a mused rhyme,

To take into the air my quiet breath;

Now more than ever seems it rich to die,

To cease upon the midnight with no pain..."[36]

The most popular argument used by Ethicists and Legislators alike, with regard to Euthanasia, is that even though every man has a right to life, he does not have a right to die. That being said, it is also an accepted principle that exercise of the right to refuse medical treatment does not amount to attempt to commit suicide. Where a 'competent patient' takes an 'informed decision' to allow nature to have its course, he is, under common law, not guilty of 'attempt to commit suicide'.[37] However, considering certain decisions such as the decision of the Kerala High Court in the case of *Dr. T.T. Thomas v.*

[35]*Patient in coma dies at GH*, THE HINDU, http://www.thehindu.com/news/cities/chennai/patient-in-coma-dies-at-gh/article6695008.ece.
[36]JOHN KEATS, ODE TO A NIGHTINGALE. (1819)
[37]Law Commission of India, 196th Report, Medical Treatment to Medically ill Patients (Protection of Patients and Medical Practitioners), 2006.

Elisa[38], wherein it was observed by the Court that "(...) there can be instances where a surgeon is not expected to say that 'I did not operate on him because, I did not get his consent'..(Such as) emergency operations where a doctor cannot wait for the consent of his patient (...)", it may be said that there does exist a grey area in the law relating to Consent in India. Considering Indian jurisprudence on the subject would be insufficient to resolve this conflict, as in comparison, the law relating to Euthanasia and physician-assisted suicide is much more developed in other jurisdictions.

Quoting Judge Cardozo, from as early as 1914, "*Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages*."[39] This might, in other terms, be said to be a reflection of the principles of consent as a defence against the intentional torts of assault and battery. A liberty interest in withholding or withdrawing medical treatment is grounded in the common law right of informed consent to medical treatment and its logical corollary of the right not to consent.[40] Therefore, in the absence of informed consent, an intruding physician, despite his honourable intentions, may be liable for the tort of battery. In addition to this defence arising out of the Common Law, there have been instances of foreign Courts using a Constitutional basis to validate the exercise of the right to refuse medical treatment.

For instance, as can be seen in the case of *Quinlan*,[41] similar to the common law rights, the constitutional rights are also grounded in the notion of consent and the patient's ability to accept or refuse.

[38]Dr. T.T. Thomas v. Elisa, (1987) AIR Ker 52.
[39]Schloendorff v. Society of New York Hospital, (1914) 105 N.E., 93.
[40]Susan Machler, *People with Pipes: A question of Euthanasia*, 16 U. PUGET SOUND L. REV. 781 (1991).
[41]In Re Quinlan, (1976) 429 U.S. 922.

Consequently, patients may have a privacy right or liberty interest in preventing unwanted bodily intrusions by others in the form of medical treatment. However, there do exist, and courts have recognized, certain compelling interests overriding the right to control one's own body. As with all other rights, the individual's right to privacy is not absolute and must be balanced against countervailing state interests; that is, the preservation of life, the prevention of suicide, the protection of the interests of innocent third parties and the maintenance of the ethical integrity of the medical profession. Since substantive due process allows a state to interfere with an individual's rights, when there is a compelling state interest, the rights of the individual must be balanced against the state interest in preserving life.[42]These interests may not appear so substantial, however, when examined in light of those suffering from a terminal or an incurable disease desiring premature death.[43]

The confusion of case law in the area of refusal of treatment underscores the need for legislation. The courts have not adequately clarified the discretion that an individual has over his life. Any attempt to reconcile the cases would be in vain. The only viable alternative is legislation. No longer are reproaches to euthanasia legislation based on alarmism and religious grounds sufficient to outweigh the need for consistency in the law.[44]

VII. SANCTITY OF HUMAN LIFE DEBATE

"*The right to privacy is an 'expression of the sanctity of individual free choice and self-determination as fundamental*

[42]Machler, *supra* note 40, at 793.

[43]William H. Baughman & John C. Bruha, *Euthanasia: Criminal, Tort, Constitutional and Legislative Considerations*, 48 NOTRE DAME L. REV. 1203 (1973).

[44]*Id.*

> *constituents of life. The value of life as so perceived is lessened not by a decision to refuse treatment, but by the failure to allow a competent human being the right of choice*."[45]

It may be said that the most compelling state interest involved where patients desire to refuse medical treatment is preserving the sanctity of human life. The law generally looks upon attempts to terminate life prematurely as the work of an unsound mind and permits States to interfere to prevent such acts and to punish those who aid in such undertakings.[46] On the other hand, the law swears to protect the fundamental right of privacy and the freedom of choice to each and every individual. This conflict may be well observed by considering the decisions of United States Courts in the cases of *Heston*[47]and *Munoz.*[48]

In *John F. Kennedy Memorial Hospital* ***v.*** *Heston*, the court ordered the blood transfusion of an unmarried woman, a Jehovah's Witness, who, for religious reasons, refused the blood transfusion. The court based its decision on a compelling state interest in sustaining life and avoiding liability of the hospital due to its acquiescence in the refusal. On the other hand, in *Norwood Hospital v. Munoz,* the court weighed the state's interest in preserving life, but it concentrated not merely on saving a life, but on preserving the quality of life. Thus, in recognizing the value of quality of life, the *Munoz* court took into consideration the fact that she believed, by virtue of her religion that receiving a blood transfusion would preclude resurrection and everlasting life,[49] and therefore held that the intrusive nature of a blood transfusion lessened the value of her life. To add further

[45]Norwood Hospital v. Munoz, (1991) 564 N.E.2d 1017.
[46]Baughman, *supra* note 43.
[47]John F. Kennedy Memorial Hospital v. Heston, (1971) 58 N.J. 576.
[48]Norwood, *supra* note 45.
[49]Machler, *supra* note 40, at 801.

authority to the decision in *Munoz*, the decision in *Eriksson v. Dilgard*[50] unqualifiedly extended the right to refuse medical treatment without expanding upon the rationale of the same. The statement "*it is the individual who is the subject of a medical decision who has the final say*"[51] is of wide ambit, and fails to reflect the interests of the State.

Suffice to say that even in factually similar situations, Courts have provided judgements which are diametrically opposed in its very nature. The court's development of the concept of compelling state interest in sustaining life is *prima facie* based on a rather sweeping conclusion that there is no difference between suicide and passive submission to death.[52] Be that as it may, it is ironic that an analysis of the *"sanctity of life"* involves essentially an inquiry into the quality of life. Several Courts have refused to evaluate the quality of a patient's life in cases that involve permanently unconscious patients, and they considered only the patient's intent.[53] Nevertheless, courts apparently have little difficulty evaluating the "sanctity" or "value" of life when it concerns a competent patient, even when that patient is still capable of making that judgment alone and is clearly expressing his or her intent.[54] Perhaps because competent, functioning individuals are still *"involved in mankind,"* we are reluctant to let them die without questioning their judgment, or worse perhaps, we do not want to articulate the precise moment when it is agreed that life is no longer worth living.[55]

[50]Eriksson v. Dilgard, (1962) 252 N.Y.S.2d 705 (Sup. Ct.).
[51]Norwood, *supra* note 45.
[52]Baughman, *supra* note 43, at 1257.
[53]In re: Estate of Longeway, (1989) 549 N.E.2d 292, 299 (Ill.).
[54]McKay v. Bergstedt, (1990) 801 P.2d 617, 624 (Nevada); Bouvia v. Superior Court, (1986) 225 Cal. Rptr. 297 (Cal. App.).
[55]Machler, *supra* note 40, at 801.

"For I am involved in mankind", seems to be a rather cruel test for determining whether a man's life is worthy of living, which sounds awfully and frighteningly similar to *"destruction of life not worth living."* This phrase, founded by Karl Binding, was popular in Germany and was used to describe not only the patient's own attitude toward life but also his objective uselessness to the community.[56] Binding primarily favored destruction of institutionalized idiots by state action for the purpose of relieving society of a burden, as he preferred to think of it. This project was hugely popular with large segments of the German public, and it was later developed by Hitler into his notorious program of mass destruction of mental patients, wherein he licensed the murder of 2,75,000 people whom he labeled as "useless eaters." This, however, had to be revoked later by Hitler himself upon overwhelming public protest. German post-war decisions condemned the killing of insane persons whose "killing was licensed" by the Nazi regime "*because their life was of no 'value'*", as "*killing in the service of a cynical utilitarianism" rather than "assistance rendered to the incurably ill*."[57]

The phrase *"Destruction of life not worth living"* sparks off an allied and important psychological angle to the Euthanasia debate. This terminology fails to describe the patient's attitude towards his own life, but on the other hand, evaluates his "objective uselessness" to the community, or, put another way, concentrates on the aspect of relieving society of a burden. As was infamously said, "drugs used in assisted suicide cost only about $40, but it could take $40,000 to treat a patient properly, so that they will exercise the "choice" of assisted suicide."[58]

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[56]Helen Silving, *Euthanasia: A Study in Comparative Criminal Law*, 103 U. PENN L. REV. 350 (1954).
[57]*Id.*
[58]Arguments against Euthanasia, EUTHANASIA, http://www.euthanasia.com/argumentsagainsteuthanasia.html.

Killing may even be said to be easier and cheaper than the alternative of providing care to the patient. In fact, a reading of the Supreme Court's decision in *Shanbaug* wherein it quoted certain passages from *Airedale* in approval,[59] would indicate that passive Euthanasia has come to be seen more as a resource allocation measure that is devoted to keeping alive people who have negligible chance of survival owing to incurable diseases exempting the possibility of medical miracles, whereas these resources could alternatively be devoted to give attention to the curable diseases or funding preventive medicines.[60]It is possible therefore that validating legislation may be viewed in wrong light, as economically beneficial to the state exchequer and not an ethical acknowledgment of the right of the terminally ill.[61]

Granted, the test to determine whether a person may be legally permitted to die as we know it does not license active killing of persons for the benefit of others, but if the rationale behind Euthanasia is "to render assistance to the incurably ill", the test evolved to permit or reject a plea for the same need not take into consideration the utility of the individual. The crux of the semantic problem arises in attempting to differentiate between "allowing death to occur" and what the writers persist in calling "voluntary" or "passive" euthanasia. Those who would prefer some form of euthanasia even though they qualify their name for it and emphasize that it is undertaken with the consent or approval of the patient and with the most merciful or compassionate of motivations are still nevertheless speaking of the *taking* of a human life. To make this very same taking of life more palatable, they further qualify their chosen terms so that it is limited to only terminally ill persons who are doomed to die in a matter of days anyway. No matter how many

[59]Shanbaug, *supra* note 5, at ¶73.
[60]BRAD HOOKER, RULE-UTILITARIANISM AND EUTHANASIA (Blackwell Publishing, 1997).
[61]Sebastian, *supra* note 20, at 369.

qualifiers are added to their definitions, they are, in essence and in fact, talking about "permitting death to occur."[62] Merely because humans perceive or wish to perceive the real nature of their actions as something which is not morally reprehensible sadly does not make it so.

VIII. CRIMINAL IMPLICATIONS

It is said that the most harmless among the various forms of Euthanasia consists in relieving the pain of a patient doomed to die without shortening his life duration. Barth refers to it as "pure" euthanasia.[63] However, even this form of euthanasia raises certain theoretical legal problems. Euthanasia presents an irreconcilable paradox in the code of medical ethics in the form of a contradiction within the Hippocratic Oath itself because while delivering the same, there is an explicit promise on part of specialists to prolong and protect life even when a patient is in the late and most painful stages of a fatal disease. Thus, while an attempt to prolong life violates the promise to relieve pain, relief of pain by killing violates the promise to prolong and protect life.

More importantly, a discussion of Euthanasia raises the theoretical legal issue of ascertaining "motive," a topic which has been blissfully neglected in our criminal jurisprudence. This principle is embodied in the maxim, "*actus non facit reum, nisi mens sit rea"*, meaning, an act does not make one guilty unless the mind is also blameworthy. *Mens rea* is the state of mind indicating culpability, which is required by statute as an element of a crime.

[62]Baughman, *supra* note 43.
[63]Silving, *supra* note 56, at 351.

Though *mens rea* is an indispensable requirement to establishing guilt, sadly, in the case of Euthanasia, the attitude of the actor is blatantly disregarded, and a conviction on guilt is based on superficial grounds.[64] An actor is dangerous, where, in the light of the circumstances, it may be assumed that he would act similarly in other situations.[65] The true mark of murder would be the depraved mind or the dangerousness of the actor.[66]However, one cannot ignore the fact that Euthanasia, performed at the request of the patient, is an exceptional situation not comparable to other situations in everyday life. Attributing *mens rea* to a mercy-killer seems rather inconsistent with logic where mercy is his primary consideration.

Furthermore, bearing in mind the fact that our legal system is an individualistic legal system, it is imperative that Silving's observations in his ground-breaking study *'Euthanasia- A Study in Comparative Criminal Law',* be given due consideration: *"We believe that man is endowed with an innate personal dignity and that he is an end in himself and not a mere means serving extraneous social ends, such as those of the state, or even those of fellow human beings. This implies that there can be no exculpation or reduction of penalty in cases in which death is administered for the benefit of a person or a number of persons, however large. Respect for human dignity, furthermore, implies recognition of the human will as a value. From this recognition follows the decisive significance of the patient's consent or request in the evaluation of euthanasia cases*."[67]

This highly individualistic philosophy of criminal law draws a very clear distinction between active conduct and non-feasance. It does not, for instance, impose a general affirmative duty of rendering assistance to a person in peril. The affirmative duties it imposes are

[64]*Id.*
[65]*Id.* at 355.
[66]Sebastian, *supra* note 20, at 352.
[67]*Id*. at 355.

rare and specific, as in the medical profession. The problem arises when, where there is a specific duty to act, failure to do so should be regarded, under exceptional circumstances such as those which might occasion euthanasia, as equivalent to an affirmative act.

Pursuing this line of thought would naturally lead to the question of criminal liability in those exceptional cases where the law deems that the physician had a positive duty to act[68] and his refusal to act without the consent of the patient had led to the inevitable death of the patient. Here, the essential consideration is that the law is faced with deciding issues firmly rather than refer merely to moral obligations of the doctors, because a deliberate omission which causes death may also expose the medical practitioner to the allegation that his conduct is criminal. It is not a sufficient reassurance for a doctor, in the present state of the law, to be told that his proposed conduct was medically ethical. He is entitled to know about civil or criminal liability under the law.[69]

Even though it is perfectly within the bounds of the law for a *mentally competent* adult to refuse medical treatment, it is in fact the physician's judgement regarding the patient's mental competency that is significant. The definition of a 'competent patient' has to be understood by the definition of 'incompetent patient'. 'Incompetent patient' is a minor or a person of unsound mind or a patient who is unable to weigh, understand or retain the relevant information about his or her medical treatment or unable to make an 'informed decision' because of impairment of or a disturbance in the functioning of the mind or brain or a person who is unable to communicate the informed decision regarding medical treatment through speech, sign or language or any other mode.[70] Patients with life-threatening illnesses

[68]TT. Thomas v. Elisa, (1987) AIR Ker 52.
[69]Law Commission of India, 196th Report, Medical Treatment to Medically ill Patients (Protection of Patients and Medical Practitioners), 2006, at 71.
[70]*Id.* at 421.

often have greatly impaired capacity to make rational judgments about complex matters. Potent emotions, such as fear, anguish or despair, are frequently present, though when they are recognised and treated adequately by competent doctors, the reason for a request to be killed will often disappear. To accept requests for death at face value without providing adequate care would be a form of patient abandonment, by taking advantage of their vulnerability in such states. In so doing, their autonomy would be abused, in the name of honouring it.[71]

Due consideration should also be given to the propositions laid down by L.J Butler in the regarding mental capacity, which were also incidentally referred to in the 196th Law Commission Report as fundamentals governing mental capacity: *"A person lacks capacity if some impairment or disturbance of mental functioning renders the person unable to make a decision whether to consent to or refuse treatment. That inability to make a decision will occur when (a) the patient is unable to comprehend and retain the information which is material to the decision, especially as to the likely consequences of having or not having the treatment in question; (b) the patient is unable to use the information and weigh it in the balance as part of the process of arriving at the decision. If (...) a compulsive disorder or phobia from which the patient suffers stifles belief in the information presented to her, then the decision may not be a true one."*[72]

Who is to decide whether the physical and mental agony that a person encounters during the course of his ailment has had a substantial detrimental impact on the psychological state of the patient; so much

[71]Brian Pollard, *Human Rights and Euthanasia*, BIOETHICS, http://www.bioethics.org.au/Resources/Online%20Articles/Other%20Articles/Human%20rights%20and%20euthanasia.pdf.

[72]Law Commission of India, 196th Report, Medical Treatment to Medically ill Patients (Protection of Patients and Medical Practitioners), 2006, at 108.

so that he wishes for nothing more than he wishes for his own death even if there exists the slender possibility of his revival? In such cases, the information that a patient is presented with by the physicians may even be absolutely immaterial to him. His consent would be influenced by the pain he is enduring much more than the information he is presented with.

Another interesting question that is posed by Euthanasia, apart from the subjective element of altruistic motive which might bear on the character of the actor and the extent of his blame-worthiness, is determining the proper objects of criminal protection and their correct classification in accordance with the degree of protection they deserve.[73] It is to be understood that the most diverse acts have been referred to under the common term "Euthanasia." From this very same diverse classification arises the necessity of drawing a distinction between euthanasia in the sense of killing of an incurably ill person for the purpose of putting an end to his misery, and euthanasia in the sense of destruction of life which is "not worth living" because it is socially useless. The prevalence of Euthanasia, despite it being prohibited under the law, further augments the case for drawing such a distinction, and even in doing so, further distinctions must be drawn between death resulting from non-feasance and by affirmative conduct, and between euthanasia with or without the consent or request of the deceased. Euthanasia encompasses acts which are seemingly related to each other and are indeed referred to under the same name, and therefore, there is a need for a sound diversification of crime demonstrates the need for a sound diversification of crime.[74]

However, this is not a simple task either and requires careful consideration. Suggestions such as those propounded by Glanville

[73]Silving, *supra* note 56. at 351.
[74]*Id.*

Williams, which maintain that since immunity should be granted to physicians who administer euthanasia in good faith and that there is no need for legislation, are myopic.[75] In fact, doing so would be to confer too much discretion on the doctor[76] and such an alternative to legislation cannot be said to be within a common man's expectation that the law should be lucid and consistently applied. Merely suggesting that a physician should be presumptively immune for administering euthanasia only deals with one facet of the problem. The implications of euthanasia are broader than the physician's liability.[77]

It has also come to be understood that Euthanasia, when administered with the consent or upon demand of the deceased, borders on two significant concepts of criminal law, which bear both on motive and on the objective elements of criminal behaviour: assistance in suicide and the special crime of "homicide upon request," which is unknown in Indian law. Many commentators assert that active euthanasia as an intentional act, which is the direct cause of death, raises more serious issues and requires careful restrictions, if not unconditional prohibition. According to this view, active euthanasia is equivalent to murder because of the intent to kill. Likewise, this position considers passive euthanasia to be less reprehensible than active euthanasia because it is the result of an omission rather than a positive act. On the other hand, the opposing school of thought argues that the failure to act itself constitutes an act.

Absent *mens rea*, the case might not be characterized as Murder. However, the relevant question that arises here is not the culpability of the actor, but whether such an action of depriving life is ethically

[75]GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 326 (Cambridge University Press, 1957).
[76]Kamisar, *Some Non-Religious Views Against Proposed "Mercy-Killing" Legislation*, 42 MINN. L. REV 969 (1958).
[77]Baughman, *supra* note 43, at 1259.

less objectionable than that of a physician who, while acting at the request of the patient, after mature deliberation and careful weighing of his medical chances, arrives at the conclusion that there is no hope of recovery or for him, and thereafter, guided by such sympathy, applies euthanasia in accordance with what he regards as his medical conscience?[78] Then again, it may be argued that physicians should never be guided by the emotion of compassion, and should at all times apply a dispassionate and impersonal scientific judgment.[79]

IX. TERMINAL ILLNESS

This discussion of Euthanasia would be incomplete in its very essence without providing a special reference to the concept of 'Terminal Illness'. The boundary of euthanasia, earlier being restricted to 'patients', has gradually expanded to include 'persons'. Moreover, a new problem has cropped up with the difficulty in defining who may be in excruciating pain or unbearable agony so as to be regarded as 'incurably ill' attracting the termination of his life on compassionate grounds. The crux of the issue is that all the definitions available have led to ambiguity and it has become virtually impossible to neglect the possibility of misuse in the event of legislation. Most countries that have legalized euthanasia (in any form) consider terminal illness as an essential prerequisite to allow such act. The prime question that needs to be addressed in this regard is, at what juncture of a disease it would be legal, moral, and ethical to condemn a man to die? In light of the importance attached to the idea of 'Terminal Illness' in the current milieu, a list of definitions of the said term from around the globe shall be discussed below, in order to assess the generally accepted notion with regard to the term. However, before we delve into the

[78]Silving, *supra* note 56, at 353.
[79]*Id.*

various definitions that have been made available to us today, it is imperative that these definitions be read in the light of the traditional definition or understanding – for lack of a better word – of the concept of Terminal Illness. Traditionally, such a condition was understood to be one without cure and which will result in death, whether life-prolonging therapy is administered or not.

Jumping to Indian Jurisprudence on the subject, as provided in Section 2(m) of the Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2006, terminal illness means:

- such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or
- which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient[80].

For how much time should a patient live for his death to be one that is not untimely? And who is to impose this death sentence?

The U.K. Social Security Contributions and Benefits Act, 1992 regards a person to be "terminally ill" at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months[81]. On a similar note, the Oregon Death with Dignity Act states 'terminal disease' to be an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment,

[80]Law Commission of India, 196th Report, Medical Treatment to Medically ill Patients (Protection of Patients and Medical Practitioners), 2006.
[81]Social Security Contributions and Benefits Act, 1992, (United Kingdom).

produce death within six months[82]. A question that naturally follows in this sense is what constitutes reasonable medical judgement?

The Oregon Death with Dignity Act considers the opinions of the concerned person's attending physician and consulting physician to be reasonable medical judgement. As per the Revised Code of Washington, a person can be termed to be in terminal condition if it is so certified by the attending physician[83]. Lord Falconer's Assisted Dying Bill as introduced in the House of Lords in June, 2014, requires certification from a registered medical practitioner to brand a person "terminally ill".[84]

In the Netherlands, where euthanasia is legal, terminal illness involves "concrete expectancy of death".[85] One may call this definition vague, as there is no yardstick that is laid down to stamp a person terminally ill. However, on the face of it, deeming a person's life worthless of living if he cannot live for a certain set time period, would also contradict settled moral and ethical principles.

It is also important to note that in the winter of 2001-02, the Michigan Legislature enacted 15 bills comprising what has been called the ''End-of-Life Care Amendments'' of 2001 which commented upon the largely time- bound definition of ''terminal illness'' as a disease that limits life expectancy to less than six months. It was pointed out to be problematic because the causes of death have been consistently shifting to chronic longer term conditions, such as heart disease, stroke, diabetes, and Alzheimer's disease. In such cases, it would be difficult to accurately determine when patients with these diagnoses

[82]The Oregon Death with Dignity Act, 1997, (United States of America).
[83]The Natural Death Act, 1979, (United States of America).
[84]The Assisted Dying Bill, HL Bill 6, 2014, (United Kingdom).
[85]Terminal Illness, THE LIFE RESOURCES CHARITABLE TRUST, http://www.life.org.nz/euthanasia/abouteuthanasia/abouteuthanasia4.

are ‘‘terminally ill[86].” The terminology, "terminally ill patient" has now been replaced with "patient with reduced life expectancy due to advanced illness" under the Michigan law.

Of course, the pronouncements and discussions have expanded in length and have encompassed various new aspects. However, like many other allied issues raised by Euthanasia, they have essentially failed in providing any real clarity as opposed to the traditional understanding.

X. CONCLUSION

The Encyclopaedia of Crime and Justice defines euthanasia as 'an act of death which will provide relief from a distressing or intolerable condition of living.’[87] In its pure meaning, Euthanasia was traditionally used as a vehicle signifying painless death to patients, who were terminally ill, for whom life would be more painful than death. With changing times, the definition has come to encompass impulses of suicide and its inviolability has degraded so as to regard this as a subset of murder or a licence authorized with a right to kill.

Probably the story of Jack Kevorkian yields a perfect example. He was a Euthanasia Activist who believed that if a Doctor’s conscience said that the law was immoral, he needn’t follow it.[88] Admittedly, his ultimate aim was to make Euthanasia “an enjoyable experience” for the patient.[89] He assisted in the death of over 130 of his Patients, and avoided conviction for over 8 years, until he was finally convicted for

[86]Robert C. Anderson, *End of Life- Care: Legislation Removes Barriers for the Terminally Ill*, MICH. B. J. 18 (2003).
[87]KADISH, SANFOR H., ENCYCLOPEDIA OF CRIME AND JUSTICE (Free Press, 1983).
[88]Larry King, *Jack Kevorkian: Hero or Killer?*, CNN, http://edition.cnn.com/TRANSCRIPTS/0706/04/lkl.01.html.
[89]Belkin, *supra* note 19.

second degree murder in 1998. A study released by the New England Journal of Medicine revealed that only 25% of his patients were terminally ill, and in fact 75 percent of the 60 Kevorkian-assisted deaths that were investigated were of victims who were not suffering from a potentially fatal disease, while 5 had no discernible disease at all.[90]

This underscores the need to understand that although at least two persons are involved in euthanasia, both of whom will have to make an autonomous decision, only the autonomy of the patient is discussed. If there is anything that the Kevorkian example teaches us, it is that the doctor is a separate moral agent, with autonomous responsibility for his or her own actions, particularly those with undoubted moral content, and this autonomous responsibility will always be more determinative of the performance of Euthanasia than the patient's, since it will not happen without a consenting Doctor. However, this autonomy totally escapes examination.[91]

Euthanasia, in its varied interpretations, has been subject to plenty of legislative and judicial debate in the past. This is evidenced by the fact that the issues presented by euthanasia first came for consideration in the 196th Law Commission Report on The Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill as much as twenty six years back, and was revisited again in its 241st Law Commission Report on Passive Euthanasia, following the judiciary's exculpation of the present legal position on the subject in *Shanbaug.* The notice issued by the Supreme Court to the States for their views on the issue of passive euthanasia and the allied right to die with dignity is another clear indication of the fact that the debate concerning euthanasia may fast

[90]Lori A. Roscoe et al., *Dr. Jack Kevorkian and Cases of Euthanasia in Oakland County, Michigan*, 1990–1998, 343 NEW ENGL. J. MED. 1735 (2000).
[91]196th Report, *supra* note 69.

be approaching its end, as one cannot ignore the present scenario which sees impending legislation on the subject. Therefore, there is a necessity for replacing our neurotic attitudes toward death and viewing death as "a biological function."[92]It is only in this context that the merits of euthanasia legislation can be clearly and objectively perceived.

Therefore, it is our submission that when the issue of euthanasia is finally decided upon, the answers must also be provided to the finer questions posed by the same. For instance, if at all euthanasia is to be legalized, it is up to the Legislature to provide clarity on whether euthanasia accepts that a person's qualified right to die is in fact not curtailed by the society's intrinsic need of protecting life and its sanctity. This might well be perceived as a move away from a pseudo-utilitarian form and the society's paradigm shift to what one may call a truly individualistic system. Of even more concern is the grey area that exists in connection with defining the term 'terminally ill', as this is the most material aspect of any discussion on Euthanasia. 'Consent' and the parameters that vitiate consent need to be defined, particularly in relation to a terminally ill patient who has no means of expressing his consent by reason of him having no relatives, or any other factor. This calls for a discussion on the criminal aspects of Euthanasia and the scope of the physician's reasonable medical judgement in making such decision may have to be addressed.

Suffice to say that much needed legislation is impending and this calls for careful consideration of a catena of finer legal issues. Whether they will be addressed, only time will tell.

[92]Morris, *Voluntary Euthanasia*, 45 WASH L. REV. 239 (1970).